IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2337 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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A'BAD MUNICIPAL TRANSPORT SERVICE - Petitioner(s)
Versus
SHIVAJI R PARMAR - Respondent(s)

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Appearance :
MR MG NAGARKAR for Petitioner(s) : 1,
MR VM DHOTRE for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 04/05/2006

ORAL JUDGMENT

1.In the present petition, the petitioner Ahmedabad Municipal Transport Service has challenged the legality of the award dated 3rd January 1995 passed by the Labour Court, Ahmedabad.

2.Respondent herein was engaged as a daily-wage driver by

the petitioner-Corporation some time in the year 1979. In due course, he was given permanent status. Finding that he had produced a forged school leaving certificate, a departmental inquiry was conducted against him and he was dismissed from service. The order of dismissal was passed on 23rd March 1985. This order was challenged by the respondent before the Labour Court by filing reference (LCA) No.961/90. Before the Labour Court, the respondent admitted the legality of the departmental inquiry. In fact, before the employer also, the respondent had admitted his guilt. Despite this, the Labour Court in its impugned award observed that the petitioner herein has not examined any officer on oath to establish the charges against the respondent and to prove that the school leaving certificate produced by him was false. The Labour Court on the basis of the said observations and on the finding that the workman had already rendered seven years of service without any complaint directed that he should be reinstated in service with continuity but without backwages and further provided that penalty of withholding of two increments with future effect be imposed upon him.

3.Findings of the Labour Court are perplexing to say the

least. To begin with, the respondent had admitted the charge before the employer. Secondly, he also admitted the legality of the inquiry before the Labour Court. There was, therefore, no occasion to hold a fresh inquiry before the Labour Court. It was, therefore, not necessary to lead any evidence to establish the charge that the school leaving certificate in question was bogus. Additionally, I also find the stand of the Labour Court somewhat incongruent. If the learned Judge was of the opinion that the charge was not proved, there was no question of imposition of any penalty, however, minor the same may be. If on the other hand, learned Judge was of the opinion that the penalty was required to be imposed which in effect he so provided for, there was no justification for reduction of punishment considering the gravity of the charge against the respondent.

4. In view of the above discussion, I find that the award of the Labour Court deserves to be set aside. The same is therefore quashed.

5. In the facts of the present case, however, some modulation is called for. The impugned award of the Labour Court was though stayed by this Court, the same was subject to fulfillment of requirement of section

17-B of the Industrial Disputes Act. To avoid liability of payment of idle wages, the petitioner reinstated the workman in service. He, therefore, discharged active duties during the pendency of the petition. Learned advocate Shri Dhotre for the respondent submitted that the respondent is completely crippled and due to the infirmity, he is unable to use his legs at all and due to which he has also tendered his resignation which was accepted with effect from February 2006. By virtue of the rivival of the dismissal order of the respondent, despite his service, he would obviously not be entitled to receive any pension. However, considering his pitiable condition and the fact that he was dismissed from service way back in the year 1985 and the litigation prolonged on all these years, as a special case, in the facts of the present case, it is provided that the petitioner shall not disentitle the respondent from receiving gratuity for the service rendered by him. Subject to the above directions, the petition is allowed. Rule is made absolute accordingly with no order as to costs.

(Akil Kureshi, J.)

(vjn)